DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4017/1dn
MJL:cmh:jf

December 20, 1999

Representative Kreibich:

At your request, I have created a separate college savings program, based upon the second proposal prepared by Don Stitt and Brian Elliott and our discussion of that proposal. Shortly before completing the draft, I received an e–mail from Mary Matthias containing new instructions that pertained to amending the EdVest program. As I discussed with Marty Olle, for administrative reasons the EdVest program cannot be changed to allow nonprofit corporations to purchase tuition units for scholarship programs. I did, however, make the other changes to EdVest that Mary included in her e–mail.

The comments below pertain to the portion of the bill dealing with the college savings program:

1. This bill requires the college savings program board to hire a private entity to invest contributions and manage the college savings program. I am not aware of any state college savings program that *requires* the state or a state board to contract for the investment of contributions. Requiring the state to hire a private entity to manage the program may threaten the tax–exempt status of the college savings plan because the IRS rules require that the state be "actively involved" in running a college savings program. The IRS looks at a number of factors in determining whether a state is actively involved, including:

a. Whether the state acts as a trustee or holds program assets directly or for the benefit of the account owners or designated beneficiaries.

b. Whether the state holds private contractors to the same standards and requirements that apply when private contractors handle funds that belong to the state or provide services to the state.

c. Whether the state provides funding for the program.

At Don Stitt's request, the contributions to the accounts are not deposited in a segregated fund but instead are sent directly to the manager. Therefore, it would be prudent to ensure that the contract between the board and the manager hold the manager to the standards and requirements in 1.b., above.

In light of 1.c. and the ongoing administrative costs of the college savings program, you may wish to consider creating an appropriation to fund those costs. This draft creates a two–year appropriation, funded with reimbursement payments from the manager, to cover only the initial administrative costs.

2. I did not include Item A on page 10 of the proposal because the program manager is not permitted to administer or develop the college savings program.

3. The proposal and this draft provide that the board determine the minimum initial contribution to a college savings account and that the manager be chosen, in part, on what minimum contribution the manager would require. It is not clear, however, who actually determines the initial minimum contribution. Do you want to delete the requirement that the manager be chosen, in part, upon what minimum contribution the manager would require?

4. At your request, this draft requires the board to report on the EdVest program. Please note, however, that under current law, the state treasurer also reports annually on the EdVest program. Do you want to eliminate one of these reporting requirements? Because the board would not be administering the EdVest program, it might be difficult for the board to prepare a report on that program.

5. The draft prevents a state agency from using the balance in a college savings account in the calculation of state aid for higher education. Should the state be prohibited from using a college savings account balance in the calculation of other state aid, such as public assistance?

6. This draft has a delayed effective date to allow the board time to promulgate rules for administering the program. The draft also provides for the provisional appointment of board members to serve pending senate confirmation.

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